

I.
THE PETITIONERS

1.01 CITY OF MCALLEN, TEXAS, MICHAEL SOTO, IN HIS INDIVIDUAL CAPACITY AND JOEL VILLEGAS, IN HIS INDIVIDUAL CAPACITY are the Petitioners and a Defendants in this lawsuit who have been served and appeared in this lawsuit.

II.
THE LITIGATION

2.01 Petitioners are Defendants in the civil lawsuit which is entitled Hector Hugo Garcia, individually, as next friend of LLG, a minor and on behalf of the Estate of Ashley Karime Garcia, Plaintiffs v. City of McAllen, Texas and McAllen Police Officers A. Garza, Michael Soto, Joel Villegas and Unknown McAllen Police Officers, in their individual capacities, Defendants, Cause No. C-0239-19-D, pending in the 206th Judicial District Court of Hidalgo County, Texas. Plaintiffs filed their First Amended Petition on February 26, 2016. A copy of Plaintiffs' First Amended Petition is attached hereto as Exhibit No. 12 to the Index of Exhibits attached hereto as Exhibit - A.

III.
REMOVAL

3.01 Defendants are filing this Notice of Removal pursuant to 28 U.S.C. §1441(a), which provides that any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the

defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. Federal district courts “shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

3.02 Defendant City of CITY OF MCALLEN, Texas, is a governmental entity existing and doing business in Hidalgo County, Texas, and the State of Texas. Defendants Michael Soto and Joel Villegas are individuals residing in Hidalgo County, Texas.

3.03 Additional basis and authority for the removal of this action is pursuant to 42 U.S.C. §1446(b), which provides: The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the Defendant, whichever period is shorter.

3.04 This Notice of Removal is being filed within thirty (30) days of Defendants’ notice of Plaintiffs’ First Amended Petition insofar as Defendants obtained a copy of Plaintiffs’ pleading through electronic service on February 26, 2019. Upon receipt and review of the First Amended Petition, Defendants

determined Plaintiffs now allege, for the first time, federal causes of action for violation of the U.S. Constitution and laws of the United States, and this Notice of Removal is therefore timely filed. As such, this case now involves Federal questions of which this Court has original jurisdiction. Specifically, Plaintiffs allege, in their First Amended Original Petition, under the heading “Causes of Action and Damages” at paragraphs 29-33, violations of the Fourth and Fourteenth Amendments to the Constitution of the United States, for which they sue pursuant to 42 U.S.C. § 1983. Plaintiffs therein for the first time allege, among other things, liability to Plaintiffs pursuant to 42 U.S.C. § 1983 for violating the rights of ASHLEY KARIME GARCIA and L.L.G. that are guaranteed by the Fourth and Fourteenth Amendments of the U.S. Constitution. Plaintiffs further allege that Defendants acted and failed to act under color of state law, and were deliberately indifferent to ASHLEY KARIME GARCIA and L.L.G.’S constitutional rights in an objectively unreasonable manner when seizing and using force with them, in violation of the Fourth Amendment to the U.S. Constitution, and that they exercised constitutionally impermissible excessive force and deprived them of their life and/or liberty without due process of law, in violation of the Fourteenth Amendment to the U.S. Constitution.

IV.

4.01 True and correct copies of all pleadings and orders signed by the state judge contained in the District Clerk’s File are attached hereto together with an Index

of Exhibits attached hereto as Exhibit - A. A certified copy of the Docket Sheet from the District Clerk's office of Hidalgo County, Texas, for this lawsuit is attached as Exhibit No. 1 to the Index of Exhibits attached hereto as Exhibit - A. Copies of all process, pleadings and orders served upon Defendants are attached to the Index of Exhibits attached hereto as Exhibit - A. Attached hereto as Exhibit - B is a list of all counsel of record in this case.

V.

5.01 The claims asserted by Plaintiffs could have been filed in this Federal Court pursuant to 28 U.S.C. §1331. Therefore, this Court has jurisdiction over this removal action pursuant to 28 U.S.C. §1441(a) since this is a civil action of which the Federal District Courts have original jurisdiction founded on a claim arising out of the Constitution or laws of the United States.

VI.

6.01 Defendants, CITY OF MCALLEN, TEXAS, MICHAEL SOTO, IN HIS INDIVIDUAL CAPACITY AND JOEL VILLEGAS, IN HIS INDIVIDUAL CAPACITY hereby demand a trial by jury.

VII.

7.01 Defendants CITY OF MCALLEN, TEXAS, MICHAEL SOTO, IN HIS INDIVIDUAL CAPACITY AND JOEL VILLEGAS, IN HIS INDIVIDUAL CAPACITY hereby represents to this Court that the Hidalgo County District Clerk

and all parties and their counsel are receiving notice and copies of all the pleadings associated with Defendant's Notice of Removal.

VIII.

8.01 Named Defendant, A. Garza, In His Individual Capacity, has not been served with the lawsuit and therefore is not required to join in this removal or consent to this removal. 28. U.S.C. §1446(b)(2)(A). Named Defendant, Unknown McAllen Police Officers, In Their Individual Capacity have not been identified or properly served with the lawsuit and therefore are not required to join in this removal or consent to this removal. 28. U.S.C. §1446(b)(2)(A). No appearance is being made on behalf of Defendants, A. Garza and Unknown McAllen Police Officers, In Their Individual Capacities, with this Notice of Removal.

WHEREFORE, PREMISES CONSIDERED, Defendants CITY OF MCALLEN, TEXAS, MICHAEL SOTO, IN HIS INDIVIDUAL CAPACITY AND JOEL VILLEGAS, IN HIS INDIVIDUAL CAPACITY pray for removal of the above entitled cause of action from the 206th District Court of Hidalgo County, Texas, to this Court.

Signed on this the 27th day of February, 2019

Respectfully submitted,

CITY OF MCALLEN
P. O. Box 220
1300 Houston
McAllen, Texas 78501-0220
Telephone: (956) 681-1090
Facsimile: (956) 681-1099

Kevin Pagan
City Attorney
Texas State Bar No. 15406460
kpagan@mcallen.net

By: /s/ Isaac J Tawil
Isaac J. Tawil
Assistant City Attorney
Federal ID No. 29804
Texas State Bar No. 24013605
itawil@mcallen.net

Austin W. Stevenson
Assistant City Attorney
Federal ID No. 3157070
Texas State Bar No. 24085961
astevenson@mcallen.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded to Plaintiffs' counsel of record on this the 27th day of February, 2019 via the CM/ECF system.

/s/ Isaac J Tawil
Isaac J. Tawil

EXHIBIT-A

INDEX OF EXHIBITS

1. Certified copy of the Court Docket Sheet
2. Plaintiffs' Original Petition with Discovery Request
3. Citation and Return to City of McAllen, Texas
4. Citation to A. Garza
5. Citation and Return to Michael Soto
6. Citation and Return to Joel Villegas
7. Citation and Return to Unknown McAllen Police Officers
8. Defendants' Original Answer
9. Objection and Motion to Quash and Strike Citation and Proof of Service on
Unknown McAllen Police Officers, In Their Individual Capacities
10. Defendant City of McAllen's Motion to Dismiss Individual Defendants
11. Plaintiffs' Response to Defendant City of McAllen's Motion to Quash and
Strike Citation and Alternatively Motion for Substitute Service
12. Plaintiff's First Amended Petition

EXHIBIT-B

LIST OF ATTORNEYS

ATTORNEY FOR PLAINTIFFS:

Adrian R Martinez
GARCIA & MARTINEZ, L.L.P.
6900 North 10th Street, Suite 2
McAllen, Texas 78504
Telephone: 956-627-0455
Telecopier: 956-627-0487
State Bar No. 13137600
adrian@garmtzlaw.com

ATTORNEYS FOR DEFENDANT:

Kevin Pagan
City Attorney
Texas State Bar No. 15406460
kpagan@mcallen.net

Isaac J. Tawil
Assistant City Attorney
Federal ID No. 29804
Texas State Bar No. 24013605
itawil@mcallen.net

Austin W. Stevenson
Assistant City Attorney
Federal ID No. 3157070
Texas State Bar No. 24085961
astevenson@mcallen.net

P. O. Box 220
1300 Houston
McAllen, Texas 78501-0220
Telephone: (956) 681-1090
Facsimile: (956) 681-1099